IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

The Handicrafts & Handloom Export Corporation of India Ltd. Vs. Deena Nath Dani

S.B. CIVIL SECOND APPEAL No.76/1993 against the judgment & decree dated 1.2.1993 passed by the ADJ No.5, Jaipur City, Jaipur in Regular Civil Appeal No.111/1988.

Date of Order ** May 2, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Rahul Kamwar for the appellant-defendant.
None present for respondent-plaintiff despite service.

BY THE COURT:

1. This second appeal is directed against the order of first Appellate Court Additional District Judge No.5, Jaipur City, Jaipur dated 1.2.1993 whereby the first Appellate Court allowed the defendant's appeal with costs and decreed the suit to the extent of Rs.8,727.20 (Rs.6,799.20 for last three bills plus interest of Rs.1,928/- thereon).

2. The trial court had decreed the suit of the plaintiff to the extent of Rs.405.30 only.

3. The plaintiff Deena Nath, proprietor of M/s. Mayur Textile Printery, Katla Purohitji, Jaipur entered into a contract for printing of fabrics for the defendant the Handicrafts & Handloom Export Corporation of India Ltd, New

Delhi. Under the said contract if the printing on a fabric was not found suitable and up to the mark the defendant was entitled to deduct the money for printing charges and also returned the fabric to the contractor and realise the cost of such fabric. As against the total bills and job charges of plaintiff of Rs.30,129.17 the defendant paid a sum of Rs.15,234.43 only and against remaining amount due the defendant deducted a sum of Rs.8,510.75 towards printing charges on the fabric which was not up to the standard as agreed. As against the remaining due amount and after adding a sum of Rs.500/- by way of security with the defendant against the total dues of the plaintiff of Rs.6,190.61 after deducting the sum of Rs.6,285.31 towards value of invoice No.STR/11 dated 31.5.1976, the defendant admitted that a sum of Rs.405.30 was due to the plaintiff. This is for which the trial court passed the decree in favour of the plaintiff.

4. The first Appellate Court, however, held that there was no fresh agreement between the parties as alleged in the written statement by the defendant that the plaintiff came to their Delhi office and agreed that the fabric of which printing was not up to the mark may not be returned back to him by the defendant and instead of that the printing charges now due may be reduced to that extent. For this Ex.A-4 agreement on the letter head of defendant dated 9.5.1975 took place which is also counter signed by plaintiff D.N. Dani. The first Appellate Court in ignorance of this evidence Ex.A-4 held that the defendant failed to prove that there was any new agreement between the parties

in this regard and, therefore, reduction of printing charges for last three bills by the defendant was not justified. The first Appellate Court, therefore, framed a new issue and on the basis of evidence already on record without remanding the case back to the trial court, decided such modified issue in favour of plaintiff and decreed the suit to the extent of Rs.8,727.20 as aforesaid.

5. Having heard the learned counsel and upon perusal of record, this Court is of the opinion that first Appellate Court committed an error in ignoring the evidence in the form of Ex.A-4 dated 9.5.1975 whereby on account of meeting between the parties for reconciliation of accounts for job charges, the parties agreed that value of specified fabrics in the said agreement would be deducted from the printing bills of the plaintiff M/s. Mayur Textile Printery.

6. In view of this, this appeal is allowed and the judgment of first Appellate Court dated 1.2.1993 is set aside and the judgment and decree of the trial court is restored. No order as to costs.

(Dr. VINEET KOTHARI),J.

VS/